

CREDIT PACKET INSTRUCTIONS

SMC would like to thank you for your interest in doing business with us. We will do everything we can to deliver quality products and services to help your company become more successful. If you have any questions, please contact your account representative. **Send completed application to Melanie Steck (msteck@smcelectric.com)**

PG. 2: CREDIT APPLICATION

This form needs to be filled out completely and signed either by the owner of the company or an authorized officer of the company. If you have a prepared list of references you may attach it to the application instead of writing them on the application.

PG. 4: PERSONAL GUARANTY

This form needs to be filled out completely and signed by all owners and, if married, by their spouses. If your organization is a publicly traded company or government entity, this form is not needed.

PG. 5: RETURN GOODS POLICY

This form states our company's return goods policy and is for informational points only. You do not need to return it to us.

PG. 6: SMC'S TERMS & CONDITIONS OF SALE

This form is for information purposes only. You do not need to return it to us.

PG. 7: JOINT CHECK AGREEMENT

Unless SMC notifies you, there is no need to fill out this form.

CREDIT APPLICATION

BILLING ADDRESS	SHIPPING ADDRESS
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NAME _____	NAME _____
ADDRESS _____	ADDRESS _____
PO BOX _____	PO BOX _____
CITY _____ STATE _____ ZIP _____	CITY _____ STATE _____ ZIP _____

TRADE REFERENCES
*All information <i>MUST BE COMPLETED</i> in the following section to be considered for credit.

NAME _____	NAME _____
ADDRESS _____	ADDRESS _____
PO BOX _____	PO BOX _____
CITY _____ STATE _____ ZIP _____	CITY _____ STATE _____ ZIP _____
() _____	() _____
PHONE _____	PHONE _____
() _____	() _____
FAX _____	FAX _____
NAME _____	NAME _____
ADDRESS _____	ADDRESS _____
PO BOX _____	PO BOX _____
CITY _____ STATE _____ ZIP _____	CITY _____ STATE _____ ZIP _____
() _____	() _____
PHONE _____	PHONE _____
() _____	() _____
FAX _____	FAX _____

COMPANY INFORMATION

CREDIT CONTACT	() PHONE	() FAX	EMAIL
PURCHASE CONTACT	() PHONE	() FAX	EMAIL
NATURE OF BUSINESS	LINE OF CREDIT REQUESTED	<input type="checkbox"/> YES <input type="checkbox"/> NO TAX EXEMPT	(State regulations require collection of sales taxes if a valid exemption certificate is not on file.
BANK	BANK ACCOUNT NUMBER	SUBSIDIARY OF	DIVISION OF

CREDIT APPLICATION P. 2

		<input type="checkbox"/> YES	<input type="checkbox"/> NO
FEDERAL TAXPAYER ID NUMBER		DECLARED BANKRUPTCY IN LAST 10 YEARS	
		IF YES, WHERE AND WHEN?	
<input type="checkbox"/> PROPRIETORSHIP <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> CORPORATION/LIMITED LIABILITY COMPANY			
TYPE OF BUSINESS		DATE OF INCORPORATION / ORGANIZATION	STATE OF INCORPORATION / ORGANIZATION
YEARS IN BUSINESS	PREVIOUS BUSINESS NAME	PURCHASE DATE	
1. OWNER/PARTNER	TITLE	SOCIAL SECURITY #	%OWNERSHIP
2. OWNER/PARTNER	TITLE	SOCIAL SECURITY #	%OWNERSHIP
3. OWNER/PARTNER	TITLE	SOCIAL SECURITY #	%OWNERSHIP
1. CORPORATE OFFICER	TITLE	1. MAJORITY STOCKHOLDER/MEMBER	%OWNERSHIP
2. CORPORATE OFFICER	TITLE	2. MAJORITY STOCKHOLDER/MEMBER	%OWNERSHIP
3. CORPORATE OFFICER	TITLE	3. MAJORITY STOCKHOLDER/MEMBER	%OWNERSHIP

I AM AUTHORIZED TO MAKE APPLICATION FOR THE BUSINESS NAMED HEREIN AND CERTIFY THAT ALL INFORMATION IN THIS CREDIT APPLICATION IS COMPLETE AND FACTUAL. I UNDERSTAND THAT **SMC ("SMC")** WILL RELY ON THE ACCURACY OF THIS INFORMATION FOR ANY CREDIT THAT MAY BE EXTENDED. SMC IS HEREBY AUTHORIZED TO USE THE INFORMATION PROVIDED AND/OR TO OBTAIN A CREDIT REPORT HISTORY FOR THE APPLICANT AND THE INDIVIDUALS LISTED ON THIS APPLICATION IN ORDER TO PROCESS THIS APPLICATION AND ANY ORDERS. PURCHASER AGREES TO PAY A SERVICE CHARGE/LATE FEE/INTEREST ON ALL DELINQUENT INVOICES. PURCHASER AGREES TO NOTIFY SMC, IN WRITING, OF ANY CHANGE IN MAJORITY OWNERSHIP. ALL PURCHASES ARE SUBJECT TO SMC'S TERMS AND CONDITIONS OF SALE IN EFFECT AT THE TIME OF PURCHASE. ANY ADDITIONAL, DIFFERENT, OR INCONSISTENT TERMS AND CONDITIONS CONTAINED IN ANY ORDER FROM CUSTOMER ARE REJECTED BY SMC AND SHALL NOT BE PART OF ANY AGREEMENT. I REPRESENT THAT I AM AUTHORIZED TO PROVIDE THE FOREGOING CONSENT AND UNDERSTAND THAT BY PROVIDING MY MAILING ADDRESS, EMAIL ADDRESS, TELEPHONE NUMBER AND FAX TELEPHONE NUMBER(S), I CONSENT TO RECEIVE COMMUNICATIONS SENT BY SMC VIA REGULAR MAIL, EMAIL, TELEPHONE AND FAX.

BY SIGNING THIS CREDIT APPLICATION YOU ARE REPRESENTING THAT YOU HAVE NO RESTRICTIONS WITH RESPECT TO THE AUTHORITY OF YOUR EMPLOYEES, AGENTS, AND REPRESENTATIVES TO SUBMIT THIS APPLICATION OR TO PLACE ORDERS WITH SMC. ALL ORDERS SHALL BE DEEMED AND PRESUMED AUTHORIZED BY CUSTOMER AND CUSTOMER SHALL BE RESPONSIBLE THEREFORE, UNLESS CUSTOMER PROVIDES WRITTEN NOTICE TO SMC EXPRESSLY RESTRICTING THE AUTHORITY OF SPECIFIED PERSONS, WHICH NOTICE SHALL NOT BECOME EFFECTIVE UNTIL TEN (10) DAYS AFTER SMC'S RECEIPT, AND IN NO EVENT SHALL THE NOTICE BE EFFECTIVE AS TO ANY ACTIONS BY SUCH PERSON(S) BEFORE SMC'S RECEIPT OF SUCH NOTICE.

CUSTOMER'S OBLIGATION TO PROMPTLY PAY SMC SHALL NOT BE SUBJECT TO, OR RELIEVED OR EXCUSED BY, ANY "RETAINAGE", "LIQUIDATED DAMAGES", "PAY WHEN PAID", OR OTHER SIMILAR PROVISION OF ANY CONTRACT, INCLUDING ANY CONTRACT BETWEEN CUSTOMER AND ANY SUBCONTRACTOR, THE GENERAL OR PRIME CONTRACTOR, WITHOUT SMC'S PRIOR WRITTEN AGREEMENT THERETO, DULY EXECUTED BY AN OFFICER OF SMC. ANY SUCH CLAIM FOR A SET-OFF, CREDIT, OR BACKCHARGE SHALL BE PROMPTLY PRESENTED, IN WRITING, TO SMC WITHIN THIRTY DAYS OF THE EVENT OR DISCOVERY OF THE MATTER GIVING RISE TO SUCH CLAIM. IF LIABILITY FOR SUCH CLAIM IS ACCEPTED BY SMC, IN WRITING BY AN OFFICER OF SMC, SMC WILL CREDIT SUCH CLAIM TO CUSTOMER'S ACCOUNT. IF SUCH CLAIM IS REJECTED BY SMC, CUSTOMER'S SOLE REMEDY SHALL BE TO INSTITUTE ARBITRATION AS PROVIDED IN SMC'S TERMS AND CONDITIONS OF SALE.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION THAT MAY BE ENFORCED BY THE PARTIES.

PREFERRED METHOD FOR INVOICING:

USPS MAIL FAX EMAIL EMAIL ADDRESS: _____

SIGNATURE _____ TITLE _____ DATE _____

SIGNATURE _____ TITLE _____ DATE _____

The parties agree that this credit application may be electronically signed. The parties agree that the electronic signatures appearing on this credit application are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.

FOR INTERNAL USE ONLY

ACCOUNT NUMBER ESTABLISHED: _____ DATE _____

NOTES:

PERSONAL GUARANTY

PROVIDED TO SMC

Customer _____

The undersigned guarantor(s) (“Guarantor”), in order to induce **SMC (“SMC”)** to extend credit to the customer of SMC identified above (the “Customer”) for the purchase of goods and services, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby absolutely and unconditionally guarantee payment of any and all debts, accounts, and liabilities, and any other obligations of the Customer to SMC whatsoever, arising on or after the date of this personal guaranty, that shall at any time be owing to SMC on account of goods or services provided by SMC, whether said indebtedness is in the form of notes, bills, open account, or any other similar obligation. This personal guaranty shall be an open and continuing guarantee and shall continue in force notwithstanding any change in the form of such indebtedness, or renewals or extensions granted by SMC, without any obligation of SMC to notify or obtain Guarantor’s consent to the same, and without any obligation of SMC to pursue collection from the Customer. If there is more than one Guarantor, the liability of each shall be joint and several. This personal guaranty may only be revoked by Guarantor, effective upon the expiration of ten (10) days after receipt of written notice from Guarantor to SMC, provided that any such revocation shall not in any manner affect Guarantor’s liability for any liability or indebtedness contracted by Customer prior to the revocation becoming effective as provided herein. Any notice to SMC shall be made by US certified mail return receipt requested, postage prepaid to the address provided above, and attention SMC credit manager.

Guarantor further agrees to indemnify and save SMC harmless from any loss, damage and expense caused by or arising out of any default by Customer or Guarantor, and agree, upon demand to pay SMC the amount of any such loss, damage or expenses, including, but not limited to, all reasonable costs, expenses and attorney’s fees incurred in the enforcement of this personal guaranty, or the enforcement of any obligation as result of the extension of credit to Customer, whether or not suit is filed. This agreement shall be binding on the heirs and personal representatives of the Guarantor. SMC and Guarantor agree that this personal guaranty shall be governed by the internal laws of the state of Missouri, and the exclusive jurisdiction and venue for any action arising hereunder shall be in the state or federal courts located in Springfield, Missouri. **SMC AND GUARANTOR EXPRESSLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS PERSONAL GUARANTY.**

*Signature of each married guarantor’s spouse is required.

GUARANTOR NAME		GUARANTOR NAME	
SIGNED		SIGNED	
SS#	DATE	SS#	DATE
ADDRESS		ADDRESS	
CITY	STATE	ZIP	CITY
STATE		STATE	
ZIP		ZIP	
GUARANTOR NAME		GUARANTOR NAME	
SIGNED		SIGNED	
SS#	DATE	SS#	DATE
ADDRESS		ADDRESS	
CITY	STATE	ZIP	CITY
STATE		STATE	
ZIP		ZIP	

The parties agree that this credit application may be electronically signed. The parties agree that the electronic signatures appearing on this credit application are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.

RETURN GOODS POLICY

We pledge our cooperation to handle returns in a prompt and fair manner.
Please contact CUSTOMER SUPPORT for ALL returns.

Warehouse personnel or drivers are not authorized to approve returns or accept them without prior authorization.

1. STOCK MATERIAL – RETURNS FOR CUSTOMER’S CONVENIENCE

Provided the material is in an unused, resalable condition and of current design, Customer Support will issue a Return Material Authorization (RMA) subject to the following:

- a. No re-stock handling charge if material reaches us within 30 days from ship date and you provide us with our invoice number.
- b. A 25% re-stock handling charge applies if material reaches us after 30 days or no invoice number is provided.

2. NON-STOCK OR DIRECT SHIP MATERIAL – RETURNS FOR CUSTOMERS CONVENIENCE

Contact Customer Support before returning material with a list of the item(s) to be returned, the reason for return, and our invoice number. Non-stock material may be non-returnable; we will request return from the vendor and make arrangements to get the material from you within 30 days. Return of non-stock material is subject to a minimum 25% re-stock handling charge and any applicable freight charges.

3. OUR ERROR

Contact Customer Support. Every effort will be made to correct the error promptly.

4. DEFECTIVES

Adjustments will be made in accordance with manufacturer’s warranty.

Please recognize that warranties vary from supplier to supplier.

Depending on the nature of the defect, we may have to involve factory personnel.

5. EXCLUSIONS – NOT RETURNABLE FOR CREDIT

- a. Vendor refuses to accept the return
- b. Material cut-to-length or otherwise modified to customer’s specification.
- c. Obsolete, discontinued, or “close-out” items.
- d. Broken fragile items, e.g. porcelain or glass.
- e. Material not purchased from us.
- f. Custom material or material otherwise not returnable to the factory.
- g. Non-stock material without our invoice.

NOTE: Resalable Condition is defined as the following:

- a. In ORIGINAL container
- b. ALL materials and manuals are included
- c. NO writing/stickers on container(s)
- d. Item must NOT have been installed

*CREDIT WILL BE ISSUED WITHIN TEN DAYS OF RECEIPT OF MATERIAL.

SMC Additional Terms and Conditions:

I. Terms and Conditions Applicable to Each SMC Quotation.

1.1. **SALE, SERVICE AND TRAINING AGREEMENT.** The goods or products sold, services provided and Training provided are sold or provided in accordance with the terms and conditions in SMC's Quotation ("Seller") and these additional terms and conditions ("Terms"), and such other terms as Seller agrees to in writing, all of which shall be the Agreement of the parties with respect to the subject matter of Seller's Quotation. In the event of any conflict in the terms stated in the Quotation, and these Terms the Quotation shall control.

1.2. **ACCEPTANCE.** This sale is conditioned upon Purchaser's written acceptance of all terms and conditions of the Quotation and these Terms, and Purchaser's issuance of a purchase order in response to the Quotation shall be Purchaser's written acceptance. Seller rejects any and all terms in any purchase order or other document of Purchaser which are in addition to, different from, or inconsistent with the Quotation or these Terms. This Quotation is an offer, subject to final approval by Seller. The offer may be withdrawn at any time prior to Seller's final approval, and shall expire automatically if not accepted within 30 days from the date hereof, unless otherwise agreed to by Seller.

1.3. **PAYMENT.** Payment is due at the time of the order unless credit terms are provided on the face hereof, or otherwise provided by Seller. Any balance not paid when due shall draw interest at the rate of 1.5% per month (18% A.P.R.) on the average daily balance until paid or the highest rate allowed by applicable law, whichever is less. Notwithstanding paragraph 1.9 hereof, the parties agree that Seller may bring suit to collect any unpaid balance due from Purchaser (or arbitrate at Seller's option), and Purchaser shall pay all attorney fees and court costs incurred by Seller in connection with the suit to collect such unpaid balance, and all of Purchaser's defenses, avoidances and counterclaims (other than the defense of payment) shall be submitted to arbitration as provided in paragraph 1.9. All payments shall be made in U.S. currency. Credit card payments made after 10 days of invoice are subject to a 2.75% fee.

1.4. **CREDIT APPROVAL.** If Seller allows credit terms to Purchaser, the obligations of Seller hereunder, shall be subject to the condition precedent that Seller's credit department approves the credit of Purchaser.

1.5. **FORCE MAJEURE.** Seller shall not be liable for any delay in shipment of the goods, provision of services or training due to delays caused by its suppliers, and causes beyond its control, including without limitation, acts of God, wars, terrorism, sabotage, casualties, accidents, labor disputes or shortages, governmental laws, ordinances, rules or regulations (such as priorities, requisitions, allocations and price adjustment restrictions), or an inability to obtain personnel, material, equipment or transportation.

1.6. **TAXES AND DUTIES.** Purchaser shall pay, in addition to the purchase price, all sales, use and excise taxes, tariffs, duties and other charges imposed by any country, state, locality or other political subdivision in connection with the sale of the goods or provision of the services or training.

1.7. **WARRANTY.** Seller warrants that the goods, services or training are as described in the Quotation and these Terms, and that they conform to the specifications and standards set forth in the Quotation and these Terms. Seller's obligation under this warranty is limited to the repair, replacement or refund of the goods, services or training, and Seller shall not be liable for consequential or incidental damages, including lost profits, lost business, or any other damages, whether arising out of contract, negligence, strict liability, tort, or under any warranty, statute, regulation, or otherwise, shall not, exceed the price charged by Seller for the portion of the goods services, or training giving rise to such liability.

1.8. **ASSIGNMENT.** This Agreement shall be binding upon the parties and their heirs, assigns, personal representatives, successors in interest, and transferees, and shall inure to the benefit of the parties and their heirs, assigns, personal representatives, successors in interest, and transferees.

1.9. **ARBITRATION.** Any dispute, claim or controversy, whether arising out of contract, negligence, strict liability, tort, or under any warranty, statute, regulation, or otherwise, shall be resolved by binding arbitration administered by the American Arbitration Association. The arbitration award may be reduced to judgment by any court having jurisdiction thereof. The cost of the arbitration shall be shared equally between the parties, and each party shall bear its own attorney fees and expenses.

1.10. **ENTIRE AGREEMENT.** This Agreement is a complete and exclusive statement of the terms of the Parties' agreement. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term used herein, and no modification shall be binding unless made in a writing and signed by the party to be charged. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by separate consideration and is in a writing signed by the party to be charged. Neither party shall assign its rights or delegate its duties under this Agreement. Facsimile and E-mail signatures of the parties shall constitute original signatures for all purposes. The invalidity of any portion of this Agreement shall not affect the validity of any remaining portions thereof. The parties at all times shall be independent. Neither party is an employee, joint venturer, agent or partner of the other, and neither party may create or bind the other or create obligations or liabilities, express or implied on behalf of or in the name of the other. Certain goods may be accompanied by OSHA required MSDS prepared by the Seller's vendor, and Seller makes no warranty or recommendation with respect to the information contained in any MSDS, and the Purchaser is responsible for any reliance on such information and the use or application of such goods.

1.11. **FORCE MAJEURE.** Seller shall not be liable for any delay in shipment of the goods, provision of services or training due to delays caused by its suppliers, and causes beyond its control, including without limitation, acts of God, wars, terrorism, sabotage, casualties, accidents, labor disputes or shortages, governmental laws, ordinances, rules or regulations (such as priorities, requisitions, allocations and price adjustment restrictions), or an inability to obtain personnel, material, equipment or transportation.

1.12. **ASSIGNMENT.** This Agreement shall be binding upon the parties and their heirs, assigns, personal representatives, successors in interest, and transferees, and shall inure to the benefit of the parties and their heirs, assigns, personal representatives, successors in interest, and transferees.

1.13. **ARBITRATION.** Any dispute, claim or controversy, whether arising out of contract, negligence, strict liability, tort, or under any warranty, statute, regulation, or otherwise, shall be resolved by binding arbitration administered by the American Arbitration Association. The arbitration award may be reduced to judgment by any court having jurisdiction thereof. The cost of the arbitration shall be shared equally between the parties, and each party shall bear its own attorney fees and expenses.

1.14. **ENTIRE AGREEMENT.** This Agreement is a complete and exclusive statement of the terms of the Parties' agreement. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term used herein, and no modification shall be binding unless made in a writing and signed by the party to be charged. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by separate consideration and is in a writing signed by the party to be charged. Neither party shall assign its rights or delegate its duties under this Agreement. Facsimile and E-mail signatures of the parties shall constitute original signatures for all purposes. The invalidity of any portion of this Agreement shall not affect the validity of any remaining portions thereof. The parties at all times shall be independent. Neither party is an employee, joint venturer, agent or partner of the other, and neither party may create or bind the other or create obligations or liabilities, express or implied on behalf of or in the name of the other. Certain goods may be accompanied by OSHA required MSDS prepared by the Seller's vendor, and Seller makes no warranty or recommendation with respect to the information contained in any MSDS, and the Purchaser is responsible for any reliance on such information and the use or application of such goods.

1.15. **FORCE MAJEURE.** Seller shall not be liable for any delay in shipment of the goods, provision of services or training due to delays caused by its suppliers, and causes beyond its control, including without limitation, acts of God, wars, terrorism, sabotage, casualties, accidents, labor disputes or shortages, governmental laws, ordinances, rules or regulations (such as priorities, requisitions, allocations and price adjustment restrictions), or an inability to obtain personnel, material, equipment or transportation.

2.4. **INSPECTION.** Purchaser shall inspect the goods at the time and place of delivery and Purchaser agrees that such occasion shall constitute a reasonable opportunity for its full inspection. The parties agree that Purchaser's failure to reject the goods within three (3) business days shall constitute acceptance of the goods.

2.5. WARRANTIES. Seller makes no representation and disclaims all warranties, express or implied, for any product manufactured by a third party which may be sold by Seller, such products are sold by Seller, AS IS, and for such products the warranty, if any, shall be the warranty provided by the original manufacturer, and Purchaser shall look solely to the original manufacturer for any warranty claim. For goods manufactured by Seller, Seller warrants that such goods shall be free of defects in workmanship for a period of one year from the date of shipment, or such other period as provided on the face hereof, and if goods do not conform to this warranty, Seller at its election shall repair or replace the goods, or refund the purchase price for the portion of the goods giving rise to the warranty claim, and in all cases the cost to repair or replace other property, the cost of removing and installing the goods, and freight are not included in this warranty; and provided that this warranty does not extend to products not of Seller's manufacture, and as to such products Seller conveys to Purchaser the warranty, if any, provided by Seller's vendor. **THIS WARRANTY IS EXCLUSIVE, AND SELLER DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHER WARRANTY, WHETHER EXPRESSED OR IMPLIED. THESE DISCLAIMERS AND EXCLUSIONS, AND THE LIMITATION OF LIABILITY SET FORTH IN SECTION 1.7 HEREOF APPLY EVEN IF THE EXPRESS WARRANTIES AND THE LIMITED REMEDIES PROVIDED FAIL OF THEIR ESSENTIAL PURPOSE.** Oral statements by seller's employees or representatives do not constitute warranties, shall not be relied upon by Purchaser, and are not part of this Agreement. If Seller provides a warranty, it is conditioned upon Purchaser's payment in full. Any warranty offered by Purchaser to its customers, in excess of that offered by Seller, shall be the responsibility of Purchaser.

2.6. CANCELLATION AND RETURNS. Purchaser may not cancel this agreement, or return goods without the prior consent of Seller. For special order goods the cancellation charge shall equal the total selling price less the estimated direct labor and materials not expended less the salvage value of materials already purchased, and for returns, the re-stocking fee may equal the price of the goods. For stock items, the cancellation and return charge shall equal a re-stocking fee of 25% of the total selling price, provided that in the case of a return the goods are returned, unused, undamaged, in the original unopened, unmarked and undamaged packaging, of current design and series, and such return is received by Seller, freight prepaid, not later than 30 days after Seller's consent to the return. Goods cut to length or modified to Purchaser's specifications, obsolete, discontinued or close-out items, broken or fragile items, custom goods or goods not returnable to Seller's vendor, or goods without Seller's invoice number, are not returnable for credit.

II. Terms and Conditions Applicable to Services, in Addition to Section I. Above.

3.1 SOW. These Terms and Conditions ("Terms") cover the sale by SMC of the Products and Services to be performed set forth in a Statement of Work ("SOW") between SMC and Client, and such other terms as SMC agrees to in writing, all of which shall be the Agreement of the parties. In the event of any conflict in the terms stated in the SOW, and these Terms the SOW shall control.

3.2. WARRANTIES. (a) *Warranty for Services:* SMC warrants to Client for 12 months from substantial completion, that the Services will perform as stated in the SOW provided that the operating conditions and use of the Services are in accordance with any standards set forth in the SOW. Repaired or replacement Services provided pursuant to subparagraph (c) below are similarly warranted for the remainder of the original warranty term.

(b) *Products Warranty:* SMC warrants to Client for the period of 12 months from shipment, that the Products will be free of defects in material, fabrication, and workmanship provided that the operating conditions and use of the Products are in accordance with any standards set forth in the Statement of Work. Repaired or replacement Products provided pursuant to subparagraph (c) below are similarly warranted for the remainder of the original warranty term. For any Product manufactured by a third party which may be sold by SMC in the performance of the Services, or otherwise, the warranty, if any, shall be the warranty provided by the original manufacturer, and Client shall look solely to the original manufacturer for any warranty claim.

(c) *Remedies:* Remedies under this warranty will be limited to, at SMC's discretion, replacement, repair, re-performance, modification, or issuance of a credit for the purchase price of the Services or Products involved, but only after SMC's receipt of Client's written notification of non-conformity. Replacement Products, at SMC's discretion, may be new, remanufactured, refurbished, or reconditioned. If the repair, re-performance, or replacement does not cure the defective performance, Client may request emergency on-site service, which will be at SMC's expense (consisting of time, travel, and expenses incurred by SMC related to such services). If the defective performance is not due to warranted defects in the Services or Products, the on-site service will be at Client's expense. On-site warranty services performed at SMC expense shall not include removal or reinstallation costs related to large-scale assemblies such as motors or transformers. The foregoing will be the exclusive remedies for any breach of warranty or breach of contract arising from warranted defects.

(d) *General:* Warranty satisfaction is available only if (i) SMC is provided prompt written notice of the warranty claim, prior to the expiration of the warranty period and (ii) SMC's examination discloses that any alleged defect has not been caused by misuse, neglect, improper installation, operation, maintenance, repair, alteration, or modification by other than SMC, accident, or unusual deterioration or degradation of the Work or parts thereof due to physical environment or electrical or electromagnetic noise environment. **THE ABOVE WARRANTIES ARE EXCLUSIVE, AND SMC DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHER WARRANTY, WHETHER EXPRESSED OR IMPLIED. THESE DISCLAIMERS AND EXCLUSIONS, AND THE LIMITATION OF LIABILITY SET FORTH IN SECTION 1.7 HEREOF APPLY EVEN IF THE EXPRESS WARRANTIES AND THE LIMITED REMEDIES PROVIDED FAIL OF THEIR ESSENTIAL PURPOSE.** SMC's warranties are conditioned upon Client's payment in full.

3.3. ACCEPTANCE. (a) Acceptance of Services and Products occurs either (i) on the date the Services or Products conform to acceptance criteria in the SOW or is otherwise beneficially used by Client, but in no event later than 30 days from start-up; or (ii) if no acceptance criteria are specified in the SOW then acceptance occurs upon Delivery.

(b) *Interim Approvals.* Any SMC provided interim deliverable requiring Client approval pursuant to the SOW will be deemed accepted if formal Client approval, written or as otherwise required, is not received by SMC within two calendar weeks after the date submitted.

3.4. BUYER SPECIFICATION. Unless otherwise specified in the SOW SMC does not warrant or indemnify and will not otherwise be liable for (i) design, materials, or construction criteria furnished or specified by Client and incorporated into the Services or Products, (ii) products supplied by, made by or sourced from Client or other manufacturers or vendors specified by Client; or (iii) commercially available computer software, hardware, and electrical components. Any warranty or indemnity applicable to such Client supplied/specified products will be limited solely to the warranty or indemnity, if any, extended by the original manufacturer or vendor.

3.5. STANDARD SOFTWARE. Software comprised of firmware or standard software (including, but not limited to packaged software, templates, models and library files, and commercially available software) (collectively "Standard Software") is subject to Client's acceptance of additional terms and conditions set forth in separate third-party click-wrap license agreements provided with such Standard Software. Such terms and conditions shall be the exclusive terms and conditions applicable to such Standard Software, excluding Client's obligation to pay any license fee which shall be identified in the SOW.

3.6. CANCELLATION. Either party may terminate this Agreement on ten (10) days prior written notice; provided that Client shall (i) pay for any Services performed and Products provided before receipt of notice and any additional costs of termination including third-party commitments, reasonable profit, and overhead as may be more specifically provided in the SOW, upon submission of SMC's invoices.

3.7. EMPLOYEE SOLICITATION. During the term of this Agreement and for 12 months following its termination, Client agrees that if it hires any employee of SMC with whom the Client has had contact as a result of this Agreement, it will pay SMC 100% of the hired SMC employee's annual SMC salary, on demand by SMC as liquidated damages, with the parties agreeing that SMC's actual damages would be difficult, if not impossible, to determine.

14. **CONFIDENTIALITY.** During the term of this Agreement and for a period of three (3) years thereafter, each party shall maintain in strict confidence all technical and business data and information disclosed by one party to the other that is marked "Confidential" and will not use or reveal such information without the prior written consent of the disclosing party, including the terms of this Agreement, except on a confidential basis as compelled by law or a court of competent jurisdiction.

IV. Terms and Conditions Applicable to Training, in Addition to Section I Above.

4.1. **TRAINING FEE AND EXPENSES.** The Training Fees and travel, meals, lodging, tolls, parking, applicable sales tax, and similar expenses shall be as provided in SMC's Quotation.

4.2. **ENROLLMENT.** SMC Training Event registrations will close seven (7) calendar days prior to the Training Event start time and date.

4.3. **TRAINING SCHEDULE.** SMC shall provide the Services at the location and on the dates provided in SMC's Quotation or as otherwise agreed to by SMC and Purchaser. SMC shall not be liable for any delays caused by events beyond its control.

4.4. **WARRANTIES.** SMC warrants that the Services will be performed in a manner consistent with the recommendations of its vendors. If SMC fails to comply with this warranty, it shall re-perform the Services, at its expense, provided that SMC receives notice of such failure from Purchaser within thirty (30) days after the Services have been completed. **WHILE SMC BELIEVES THAT THE TRAINING MATERIALS USED IN THE PERFORMANCE OF THE SERVICES ARE ACCURATE AND CORRECT, SMC DOES NOT WARRANT THE ACCURACY OR THE CORRECTNESS OF SUCH MATERIALS. SMC DOES NOT WARRANT THE RESULTS OF THE SERVICES PERFORMED HEREUNDER. THIS WARRANTY IS EXCLUSIVE, AND SMC DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHER WARRANTY, WHETHER EXPRESSED OR IMPLIED. THESE DISCLAIMERS AND EXCLUSIONS, AND THE LIMITATION OF LIABILITY SET FORTH IN SECTION 1.7 HEREOF APPLY EVEN IF THE EXPRESS WARRANTIES AND THE LIMITED REMEDIES PROVIDED FAIL OF THEIR ESSENTIAL PURPOSE.** SMC's warranties are conditioned upon Purchaser's payment in full.

4.5. **FACILITIES.** Unless otherwise provided in SMC's Quotation, the Services shall be provided at a location provided by Purchaser. Purchaser shall be responsible for providing safe, sufficient and appropriate space to conduct such Services.

4.6. **HOLD HARMLESS.** Purchaser shall protect, defend, indemnify and hold SMC and its officers, directors, employees, agents and contractors harmless against the claims of any person or entity arising out of or relating in any way to the Services, including, but not limited to subrogation claims, except to the extent caused by the gross negligence or willful misconduct of SMC or those for whom it is liable.

4.7. **CANCELLATION.** To cancel or request a refund of your enrollment in a Training Event, you must contact an SMC Enrollment Specialist. Enrollment cancellations received more than 14 calendar days before the scheduled start of the Training Event will be eligible for 100% refund of the enrollment tuition. If an enrollment cancellation is received 13 days or closer to the start of the Training Event, full tuition will be charged. If a student fails to appear for a scheduled course, full tuition will be charged.

SMC reserves the right to alter or cancel Training Event schedules, content, limit class size, reschedule, discontinue, or cancel courses. If a Training Event is canceled by SMC, tuition will be refunded in full within 60 days of cancellation date, however, SMC cannot be held liable for any other expenses incurred by delegates or their organization due to cancellation.

JOINT CHECK AGREEMENT

Date: ____ / ____ / ____

To: SMC

RE: Project Name _____
Project Address _____
City _____ State _____ Zip _____
Customer Name _____
Customer Address _____
City _____ State _____ Zip _____
Total Payments to SMC Under this Agreement \$ _____

Gentlemen:

In order to induce you to sell materials to your above named Customer, for installation and use on the above identified Project, and in consideration of your furnishing materials to the said Customer, the undersigned Payor for said project covenants and guarantees to SMC ("SMC") the prompt and full payment to SMC of all invoices for materials furnished upon said project within 45 days of the date they are submitted to the Customer. SMC's invoices will be sent to the Customer, who in turn shall promptly invoice the Payor, if it has not previously done so. Past due amounts shall bear interest at 1½% per month (18% APR) until paid in full. No terms or conditions of any agreement between Customer and Payor shall be effective to vary the terms of this agreement, or the terms and conditions of sale between Customer and SMC. Payor agrees that its rights and obligations with respect to the materials provided by SMC shall be subject to the terms and conditions of sale between SMC and Customer. Under no circumstances whatsoever shall the Payor or Customer retain, withhold or otherwise backcharge, or take any credit or set-off against SMC for any amount, or for any claim, without SMC's express prior written agreement, duly executed by an officer of SMC. The Payor's and Customer's obligation to promptly pay SMC shall not be subject to, or relieved or excused by, any "liquidated damage", "pay when paid", "pay if paid", or other similar provision of any contract including any contract between the Payor and the Customer, without SMC's express prior written agreement thereto duly executed by an officer of SMC. Any such claim, set-off, credit or backcharge shall be promptly presented, in writing, to SMC within thirty days of the event or discovery of the matter giving rise to such claim, set-off, credit or backcharge. If liability for such claim, set-off, credit or backcharge is accepted in writing by an officer of SMC, SMC will credit such claim, set-off, credit or backcharge to Payor's or Customer's account. If such claim, set-off, credit, or backcharge is rejected by SMC, Payor's and Customer's sole remedy shall be to bring an action against SMC for such claim, set-off, credit or backcharge as hereinafter provided. The undersigned Payor shall submit payment in the form of check(s) jointly payable to SMC and the Customer, and shall obtain the endorsement thereof by the Customer and then forward the check(s) to SMC. The total of payments to SMC under this agreement shall be as set forth above.

This agreement shall be deemed to be a contract entered into and performable in Springfield, Missouri. It is agreed that any action provided for or relating to this agreement shall be brought exclusively in the state courts located in Greene County, Missouri, and the parties waive any objection to personal jurisdiction and venue in such courts. Customer and Payor expressly waive any right to remove such action to any Federal Court. In the event SMC is the prevailing party in any action, Payor and Customer agree to pay SMC's attorney's fees and costs incurred in such action.

It is understood that SMC is not waiving or relinquishing any rights provided by law as a material man upon the project.

Payor:

Print Name of Payor

By: _____

Print Name & Title

Payor Address:

Customer:

Print Name of Customer

By: _____

Print Name & Title

The parties agree that this credit application may be electronically signed. The parties agree that the electronic signatures appearing on this credit application are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.